



August 4, 2005

The Honorable Kevin J. Martin, Chairman
The Honorable Kathleen Q. Abernathy
The Honorable Michael J. Copps
The Honorable Jonathan S. Adelstein

Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: CS Docket No. 02-52; GN Docket No. 00-185; CC Docket Nos. 02-33, 95-20 & 98-10

Dear Chairman and Commissioners,

As the Commission moves forward to classify broadband access service as an "information service," PointOne and pulver.com urge the Commission to adopt effective user empowerment rules that go further than the connectivity principles enunciated by the High Tech Broadband Coalition (HTBC) in its August 2, 2005 *ex parte* letter. It is critical that the Commission include enforceable rules as a companion to its broadband reclassification item to ensure that consumers are able to access the content and utilize the applications and services offered over our nation's broadband networks.

User empowerment rules, that allow for swift, certain and meaningful enforcement -- with awards that justify the initiation of complaints by aggrieved consumers or unaffiliated application providers, and with penalties that compel compliance -- are critical to ensuring that network operators and owners are not able to unreasonably and unlawfully restrict consumer choice by blocking or impairing services accessed over devices connected to broadband connections. End-users and service providers must be able to seek redress with the Commission for any incidents of discriminatory treatment in violation of the user empowerment rules. By including such rules as part of the Commission's decision regarding the regulatory classification of broadband access services, the Commission will be making the necessary commitment to prevent blocking, disruption, or discrimination, thereby ensuring consumers and providers that the Commission promptly will review and resolve all valid complaints.

PointOne and pulver.com further urge the Commission to acknowledge its authority to adopt enforceable user empowerment rules pursuant to its Title I jurisdiction as also acknowledged by the Supreme Court in the *Brand X* decision.¹

PointOne and pulver.com believe it is essential that users are allowed, to the fullest extent possible, to control their own communications experience as users of the Internet and IP-enabled communications. Specifically, PointOne and pulver.com believe that the Commission should adopt, as a baseline, the following user empowerment rules as essential to protecting the interests of users subscribing to broadband service and seeking access to a multitude of applications and services over their broadband networks:

- Users should have access to their choice of legal content;
- Users should be able to run applications of their choice;
- Users should be permitted to attach any devices they choose to their broadband connection;
- Users should be able to obtain Internet access on a standalone basis or in combination with those applications or service providers of the end user's own choosing; and
- Users should know that their personal information is safeguarded, except to the extent necessary to abide by emergency services and law enforcement obligations.

PointOne and pulver.com further support HTBC's call for vigilant monitoring of cable modem, DSL, wireless, and all other broadband access services as well as a commitment by the Commission to expeditiously review and resolve any complaint concerning these consumer empowerment rules.

As Metcalfe's law states, the power of any network is increased by the square of the number of people connected to it. Thus, adoption of enforceable user empowerment rules that encourage user connectivity and lawful network usage as well as innovation at the edge can geometrically increase the value of our nation's broadband networks, benefiting not only consumers and providers but the U.S. economy as a whole.

¹ Acknowledging the breadth of the FCC's Title I authority, the U.S. Supreme Court stated that "the Commission has jurisdiction to impose additional regulatory obligations under its Title I ancillary jurisdiction to regulate interstate and foreign communications" *National Cable and Television Ass'n v. Brand X Internet Serv.*, 128 S. Ct. 2688 (2005).

_____/s/

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_____/s/

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